United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

76-7628

To be argued by
RENEE MODRY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

CARMEN IRIZARRY,

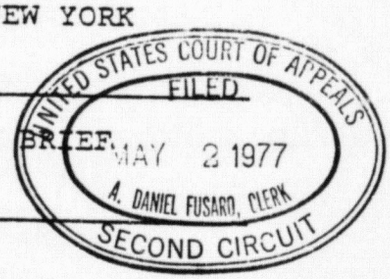
Plaintiff-Respondent,

-against-

IRVING ANKER, individually and as Chancellor of THE BOARD OF EDUCATION, JULIUS R. RUBIN, Individually and as Chairman of the BOARD OF EXAMINERS, and THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Defendants-Appellants.

ON APPEAL FROM UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF NEW YORK



DEFENDANT-APPELLANTS' REPLY BRIEF

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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CARMEN IRIZARRY,

Plaintiff-Respondent,

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Defendants-Appellants.

- -x

ON APPEAL FROM UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' REPLY BRIEF

It should be noted at the outset that the District Court found that "when she [plaintiff] applied for a hearing, a hearing was granted" (55)* and that a "full trial" was not required (56). The District Court also indicated that under Berns v. Civil Service Comm, City of New York, 537 F. 2d 714 (1976), plaintiff's license should be reinstated pending a "full hearing" (id.). The Court, however, declined to order a hearing because "plaintiff would be seriously disadvantaged by any hearing held at this time" in view of the unavailability of plaintiff's witness and the "practice of the Board of Examiners" (id.). Instead,

*Numbers in parentheses refer to pages of the Joint Appendix

the Court conditionally reinstated plaintiff's license, giving her additional time to fulfill minimum eligibility requirements.* In ordering the reinstatement, the Court declared: "This is not a precedent for other cases.... [and] doesn't affect your general procedures whatsoever" (59).

We assume that, at the very least, the Court did not hold that plaintiff be given a trial type hearing prior to the termination of her license. The Berns case does not require it and the Court expressly found such a hearing not required. While we believe the Court did not rule the hearing accorded plaintiff by the Board of Examiners insufficient, and the issue of the hearing, therefore not properly before this Court, we are not certain and have, accordingly, briefed the issue.

It is clear that plaintiff has erroneously relied on the decisions of the Commissioner of Education in Matter of Lowenstein, 9 Ed. Dept. Rep. 107 (1970) and Matter of Baronat, 11 Ed. Dept. Rep. 150 (1972) as authority for her claim that her conditional license was a "valuable property right" entitling her to a due process formal hearing before her license may be revoked (Pl. Brief at 9-10). These cases, (decided prior to Board of Regents v. Roth, 408 U.S. 564

The record does not show whether any additional requirements have become due and, if so, whether plaintiff was able to meet them. See page 78 of Joint Appendix.

(1972) and Perry v. Sinderman, id. at 593) involving the revocation of a license incident to dismissal,"based on performance-related criteria", the Commissioner ruled were "clearly not relevant" to the termination of a license for failure to meet eligibility requirements,Matter of Joyce, 15 Ed. Dept. Rep. _____, Decision No. 9295, dated August 24, 1976.* In Joyce, petitioner, whose license was terminated for failure to submit proof that he had met certain minimum requirements, complained that he was not afforded the opportunity given in the Lawenstein and Baronat cases to present evidence regarding his eligibility. The Commissioner, citing the opportunities given him by the Board of Examiners to present evidence of his eligility, dismissed the appeal.

Any doubt as to whether Baronat and Lowenstein have any application to a teacher who has submitted an appeal to the Board of Examiners, was fully resolved in Matter of Kadin, 15 ED. Dept. Rep. ____, Decision No. 9393, dated February 23, 1977.* There, as here, petitioner's license was terminated for failure to meet course requirements and there, as here, petitioner appealed unsuccessfully to the Board of Examiners. In dismissing her appeal and holding that she was not entitled to a hearing prior to termination of her license, the Commissioner found that she had neither a statutory nor a contractual right to such a hearing and that she was not stigmatized by the cancellation

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*This case has not been officially reported. We, therefore have inserted a copy at the end of our Brief.

by the cancellation of her license.

Indeed, as the Commissioner pointed out in Lowenstein, the teaching license"confers no more than a mere expectancy of employment and does not confer any claim to a specific position, or, for that matter, to any further employment", 9 Ed. Dept. Rep. supra at 209. The Commissioner went on to say that there was a stigma where the license is cancelled for "conduct unbecoming a teacher" and a hearing is required, id. at 208. Baronat was a similar case.

The rationale of Lowenstein and Baronat is clearly not applicable to the termination of a license for failure to meet minimum eligibility requirements. None of the cases cited by plaintiff which followed the Commissioner's view in Baronat involved the failure to meet eligibility requirements.

Cannaielli v. N.Y.S. Dept. of Civil Service, 44 A D 2d 645 (4th Dept. 1974), cited by plaintiff is equally inapplicable. The hearing required there was based on plaintiff's tenured employment.

Where there is no Fourteenth Amendment property right in continued employment, a hearing is not required unless the employer "disseminates a false and defamatory impression about the employee ", cf. Codd v. Velger, 45 U.S.L.W. 4175, 4176 (1977).

The termination of plaintiff's license deprives her of neither property nor liberty within the meaning of the Fourteenth Amendment and, accordingly, she has no due process right to a hearing prior to termination.

Plaintiff claims however, that the Birns case applies to her because she completed three years of satisfactory service and would have been tenured if her license had not been revoked (Pl. Brief at 12). Her claim is totally without foundation. The position she held for three years was held under three annual Certificates of Competency and was described as "Instructor of Hispanic Culture or Ethnic Studies or both (73-75). Since petitioner was never appointed pursuant to her license "her assignment, no matter what its duration, does not satisfy or fulfill the probationary requirement", Matter of Board of Education v. Nyquist, 31 N Y 2d 468, 474 (1968). Even if plaintiff had been appointed pursuant to her license arguendo, she would not have acquired tenure, notwithstanding the expiration of a probationary period until she met all the requirements for the position, not only the minimum requirements at issue here, §2573, subd. 1 (a) of the Education Law.

Plaintiff argues in Point II of her brief that she was "wrongfully" dismissed..."because of her exercise of First Amendment rights. We note that the District Court dismissed this claim and plaintiff did not cross-appeal.

We believe the issue may not now be presented.*

We submit that the only issue properly before this Court is whether the District Court properly ordered plaintiff's license reinstated, giving her additional time to complete eligibility requirements. It is our position that no federal right of plaintiff's was violated by the failure to give greater weight to her professor's statement of the course content than the catalog description of the course. Courts, generally are reluctant to interfere with the role of the education authorities to administer and control the educational system. In 1969 in Epperson v. Arkansas, 393 U.S. 97, 104, the Supreme Court set the tone for judicial restrain in overseeing school board actions:

> "Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint... By and large, public education in our Nation is committed to the control of state and local authorities. Courts do notand cannot intervene in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values."

The Board of Examiners may not change the required criteria solely to benefit an individual since the standard of eligibility must be fair to all, Tripp. v. Board of Examiners of the City of New York, 44 Misc 2d 1026 (1964). The Commissioner of Education has held in Matter of Turetsky, 7 Ed. Dept. Rep. 17 (1967) that it would be

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Plaintiff claims that she discovered subsequent to trial that the teacher who replaced her is "unlicensed" and "teaching pursuant to a federally funded program" contrary to our statements in the Court below (Pl. Brief at pages 5 and 14). We have confirmed with the District Board the accuracy of our statements. If plaintiff disputes us, we suggest that the appropriate forum for resolution is the District Court, not this Court

a violation of the Constitution of the State of New York to extend time to complete eligibility requirements since such action given to one individual would destroy the competitive nature of the examination.

Under all of the circumstances, plaintiff has failed to present a federal claim and the judgment appealed from should be reversed and the complaint dismissed.

Respectfully submitted,

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants-Appellants

L. KEVIN SHERIDAN
RENEE MODRY

of Counsel

Dated: April 29, 1977

No 9295

The University of the State of New York

The State Education Department

Before the Commissioner

IN THE MATTER

of the

Appeal of EDWARD JOYCE from action of the Board of Education of the City School District of the City of New York and the Board of Examiners of said school district, with regard to the termination of a teaching license.

Robert E. Nowak, Esq.....attorney for petitioner

Hon. W. Bernard Richland....attorney for respondent
Corporation Counsel
Howard M. Katz, Esq., of counsel

Petitioner appeals from a decision of respondent board of examiners terminating his license as a teacher of accounting and business practice in day high schools effective June 30, 1975.

On March 26, 1971, respondent board of examiners announced, at the direction of the Chancellor, an examination for licensure as teacher of accounting and business practice in day high schools under "Alternative A" requirements. On April 21, 1971, petitioner filed an application for licensure pursuant to the board of examiners "Alternative A" examination circular, which required that applicants

have the required "college-supervised student-teaching exeprience" by the date for meeting minimum requirements, which in this case was February 1, 1972. Petitioner passed the examination and was granted a license on December 1, 1971, subject to the requirements set forth in the examination circular.

Petitioner was appointed as a teacher of accounting and business practice at John Bowne High School, effective February 1, 1974.

On May 16, 1974, respondent board of examiners sent a written notice to petitioner requesting that petitioner supply proof of his having met the minimum requirements for licensure by February 1, 1972. When petitioner failed to respond to this notice, the board of examiners sent another notice to petitioner dated June 28, 1974, asking that he contact respondent regarding his eligibility for licensure. In a telephone conversation with an employee of the board of examiners on June 28, 1974, petitioner was informed that his license would be terminated on June 30, 1974. The board of examiners, however, did not officially certify that petitioner's license would be terminated on the ground of ineligibility until July 30, 1974. The board of examiners was bound by the provisions of section 241 of the by-laws of respondent board of education. That section provides insofar as pertinent, that:

> "A license...shall be valid continuously, except that it shall terminate:
>
> ...
>
> (F) On June 30 next following the certification by the Board of Examiners that the holder of a license issued subject to a licensee's completing preparation requirements by a designated date has failed to meet such preparation requirements."

Accordingly, petitioner's license could not be terminated until June 30, 1975 on the ground of failure to meet preparation requirements. On July 30, 1974, the board of examiners sent to petitioner a notice that his license would be terminated on June 30, 1975 on the ground of ineligibility. On September 19, 1974, a certificate of termination was issued by respondent board of education stating that petitioner's license would be revoked effective June 30, 1975 for failure to meet the requirements of the board of examiners. Petitioner instituted an appeal to the board of examiners' committee on appeals on October 2, 1975. That appeal was dismissed in a decision dated November 26, 1975. Petitioner asks that I set aside respondents' determinations as arbitrary and unreasonable.

Petitioner alleges that between December, 1971 and the time he received his teaching appointment in November 1973, he received no notice either orally or in writing advising him of his failure to meet eligibility requirements. That assertion, however, does not afford a sufficient basis for setting aside respondents' determinations in this case. There is no dispute that petitioner filed for examination for licensure as a teacher of accounting and business

practices under "Alternative A." Petitioner has presented no evidence that he in fact completed the required college-supervised teaching experience or its equivalent within the time required. The examination announcement, which summarized the eligibility requirements for the license,included the following:

> TIME EXTENSION: "Applicants qualifying under Preparation II are permitted to complete by February 1, 1977, the requirement of a master's degree or 30 semester hours of graduate study as set forth hereinafter. As a consequence of a recently enacted law (Chapter 822, Laws of 1969), applicants in these examinations must complete all the eligibility requirements within the time limits set in order to achieve tenure. Upon failure of the applicant to complete all requirements within said period, the license will terminate.
>
> "An applicant, therefore, by February 1, 1972 must have completed the following:
>
> 1. The baccalaureate degree;
> 2. The 12 semester hours in the professional study of education;
> 3. The college-supervised student-teaching experience (or, in lieu of the student-teaching experience, a year of appropriate and satisfactory teaching as set forth in Substitution hereinafter);
> 4. The 36 semester hours in the subject of the license."

The application signed by petitioner contained a statement that the applicant would be bound by all the conditions set forth in the examination announcement and a statement that the applicant had read the announcement and would meet these requirements. Both the

Courts and the Commissioner have held that respondents lack discretion to waive conditions or to make special eligibility requirements for individual candidates in a competitive examination (Matter of Glass v. Board of Education, 39 Misc 2d 761, revd. 21 AD 2d 891, affd. 16 NY 2d 982; Garfield v. Scribner, 39 AD 2d 602; People ex rel Finnegan v. McBride, 185 AD 482, 226 NY 252; Matter of Breger, 57 St. Dept. Rep. 415, 416; Matter of Ente, 67 Id. 57, 58; Matter of Kaminsky, 5 Ed. Dept. Rep. 127; Matter of Turetsky, 7 id 17; Matter of Niederhoffer, 12 id. 42); Matter of Williams, 15 id _____, Decision No. 9212, dated March 1, 1976). In this case, to order respondents to restore retroactively the eligibility of petitioner would be unfair to those presumably many candidates who read the examination announcement and eligibility bulletins carefully and did not apply because of statements contained therein (see Matter of Williams, supra). Such a result would threaten the competitive nature of the examinations which respondents are bound by constitutional and statutory mandate to administer on the basis of merit and fitness (Matter of Petrazzolo v. Board of Education, 5 Misc. 2d 124; affd. 4 AD 2d 855; Matter of Williams, supra). As was stated in Matter of Breger, supra:

> "The notice for this examination was probably examined by thousands of candidates and those candidates who foresaw that they would be unable to meet the eligibility requirements, in accordance with the announcement, undoubtedly made no attempt to take the examination. To extend the date of the completion of the eligibility requirements to appellant

> would not only be unjust discrimination against those who did not take the examination, having been unable to meet the requirements on the prescribed date, but it would be unjust discrimination against those who met the requirements as prescribed. To waive the eligibility requirements for any reason would open the door for a flood of applications, perhaps just as meritorious as that of appellant. Having fixed a deadline which all candidates must meet, it is my opinion that the board of examiners is without power to extend that deadline for individual cases. Any extension would need to be upon a broad basis and be applicable to all candidates affected."

Petitioner contends that respondent board of examiners should be estopped from revoking his license on the ground that an unnamed employee of the board informed him in August 1971 that he could substitute his ten years of business experience for the student teaching requirement needed for licensure. Respondents have denied knowledge of such an incident. Even assuming, however, that petitioner had been told by an employee of the board of examiners that his business experience would meet the requirements for licensure, such a statement would not be binding upon the board. As pointed out above, the board of examiners lacks discretion to waive eligibility requirements for individual applicants in a competitive examination (Matter of Glass v. Board of Education, supra; Garfield v. Scribner, supra; Matter of Williams, supra). Courts have held on numerous occasions that a governmental agency may not be estopped

by unauthorized representation made by its employees (Gavigan v. McCoy, 37 NY 2d, 548, 552; City of New York v. Wilson & Co., 278 NY 86; Matter of Town of Cornwall v. Diamond, 39 AD 2d 762; [see also Steiner Egg Noodle Co. v. City of New York, 63 Misc 2d 163, affd. 34 AD 892]). Even though respondent board of examiners did not discover that petitioner was ineligible for licensure until after petitioner had received his license and his appointment to a teaching position, it had the authority to correct its error (Matter of Petrazzolo v. Board of Education, supra; Matter of O'Brien v. Delaney, 255 App. Div. 385; affd. 280 NY 697).

Petitioner has cited the decision in Matter of Lubin, 11 Ed. Dept. Rep. 147, in support of his position. In that case, it was held that petitioner's license could not be revoked because of an unsatisfactory rating since it had not been issued subject to the condition of receiving a satisfactory evaluation. In the present case, however, it is clear that petitioner's license was issued subject to the meeting of the minimum eligibility requirements by February 1, 1972, and that petitioner's license was terminated for failure to meet these requirements.

Petitioner also contends that responden failed to follow the requirements of Education Law section 2569-a. The requirements of that section are inapplicable in this case, since section 2569-a

governs examinations for experienced substitute teachers, substitute attendance teachers, substitute attendance officers, substitute auxiliary attendance officers and substitute attendance teachers (Spanish speaking).

Petitioner further argues that he was not afforded an opportunity to present evidence regarding his eligibility. The record indicates, however, that respondent board of examiners requested several times prior to its certification of petitioner's ineligibility on July 30, 1974 that petitioner furnish proof of his having met the minimum eligibility requirements by February 1, 1972. In addition, on appeal to the board of examiners' committee on appeals, petitioner was again informed that he should supply specific documentary evidence to establish that the stipulated requirements were met by the specified date. There is no indication in the record before me that petitioner supplied any such evidence either prior to the certification of his ineligibility or before respondent board of examiners' committee on appeals.

Petitioner's reliance on my decisions in Matter of Lowenstein, 9 Ed.Dept.Rep.207, and Matter of Baronat, 11 Ed. Dept. Rep. 122, reopening denied 11 id 150, is misplaced. In these cases, petitioners'

licenses were revoked incident to the termination of their appointments based upon performance-related criteria. Such cases are clearly not relevant to the facts of this case.

THE APPEAL IS DISMISSED.

IN WITNESS WHEREOF, I, Ewald B. Nyquist, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 24th day of August, 1976.

Commissioner of Education

No 9393

The University of the State of New York

The State Education Department

Before the Commissioner

IN THE MATTER

of the

Appeal of ESTELLE KADIN from action of the Board of Examiners of the City School District of the City of New York, with regard to the termination of a teaching license.

Haskell, Blatt, Koppelman & Evans, Esqs.....attorneys for petitioner
Ronald S. Koppelman, Esq., of counsel

Hon. W. Bernard Richland, Corporation Counsel.....attorney for respondent

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Petitioner appeals from a decision of respondent board of examiners terminating her license as a teacher of common branch subjects in day elementary schools, effective June 30, 1976, for failure to meet eligibility requirements.

On June 23, 1969, respondent announced an examination for licensure as teacher of common branch subjects in day elementary schools under "Alternative B" requirements. The examination announcement set forth the various eligibility requirements and stated that applicants must meet all such requirements in full by

September 1, 1974. Among such requirements was the obtaining of a master's degree in or related to the field of teaching service or the completion of "thirty semester hours of graduate study distributed among the liberal arts, the social and behavioral sciences, and professional study in education." The announcement also stated that upon failure of an applicant to complete all requirements by September 1, 1974, the license would terminate.

On or about July 9, 1969, petitioner filed an application for licensure pursuant to this announcement. Petitioner passed the examination and was granted a license subject to meeting the eligibility requirements in full by September 1, 1974. On or about June 6, 1975, petitioner returned an application concerning the continued validity of her license. In that application, petitioner indicated that she had not completed the requirement of obtaining a master's degree or thirty semester hours of approved graduate study. Petitioner was informed by respondent in August, 1975, that the extension of the validity of her license had been denied due to failure to meet eligibility requirements and that her license would be terminated effective June 30, 1976. After counsel for petitioner contacted respondent concerning an appeal of this determination, petitioner instituted such appeal to respondent's committee on appeals in January, 1976. That appeal was dismissed in a decision dated March 29, 1976.

Petitioner asks that I set aside respondent's determination and that I direct respondent to hold a hearing concerning the question of petitioner's eligibility for licensure. In the alternative, petitioner seeks an order directing that respondent grant her an extension of time to obtain the credit necessary to meet eligibility requirements.

Petitioner contends that respondent should be estopped from terminating her license on the ground that she was misled by respondent's personnel. In 1963, petitioner was granted a pay increase and received a certificate of salary differential indicating that she had completed thirty credits of approved study beyond the baccalaureate degree. Although petitioner admits that she was aware that these credits were undergraduate in nature, she alleges that in December, 1969, an unnamed employee of respondent informed her that such credits would be sufficient to validate her license, and that she would not be required to obtain an additional thirty hours of approved graduate study. Along with setting forth a number of affirmative defenses, respondent's answer contains a general denial of the allegations contained in the petition.

The application signed by petitioner contained a statement that the applicant would be bound by all the conditions set forth in the examination announcement and would meet the various eligibility requirements by the specified dates. Previous case law and

Commissioner's decisions have held that respondent lacks discretion to waive conditions or to make special eligibility requirements for individual candidates in a competitive examination (Garfield v. Scribner, 39 AD 2d 602; People ex rel Finnegan v. McBride, 185 AD 482, affd. 226 NY 252; Matter of Breger, 57 St. Dept. Rep. 415, 416; Matter of Kaminsky, 5 Ed. Dept. Rep. 127; Matter of Niederhoffer, 12 id 42; Matter of Williams, 15 id ____, Decision No. 9212, dated March 1, 1976; Matter of Joyce, Decision No. 9295, dated August 24, 1976). Even assuming that petitioner had been told by an employee of respondent that the credits earned for the purpose of obtaining her salary differential would meet the graduate study requirements for licensure, such a statement could not be binding upon respondent (Matter of Joyce, supra). It has often been held that estoppel does not lie against the State, a municipality or their agencies where the governmental body was exercising its statutory or regulatory authority, irrespective of any representation or opinion by any of that body's officers or employees (Matter of Gavigan v. McCoy, 37 NY 2d 548, 552; La Porto v. Village of Philmont, 39 NY 2d 7, 12; City of New York v. Wilson & Co., 278 NY 86, 99, 100; Matter of Town of Cornwall v. Diamond, 39 AD 2d 762; Town of Guilderland v. Swanson, 41 Misc. 2d 398, mod 29 AD 2d 717, affd. 24 NY 2d 872; Abell v. Hunter, 211 App. Div. 467, affd. 240 NY 702). While recent appellate decisions have provided limited exceptions

to this doctrine in such areas as the filing of a notice of claim against municipalities (Bender v. New York City Health and Hospitals Corp, et al, 38 NY 2d 662) and the determination of municipal boundaries (La Porto v. Village of Philmont, supra), such exceptions have not been applied to cases involving failure to meet eligibility requirements by individual candidates who are appointed pursuant to competitive examination. I cannot conclude, based on the record before me in this case, that such an exception is warranted.

Petitioner also contends that she was entitled to a hearing prior to the termination of her license for failure to meet eligibility requirements. I cannot agree. Consideration of what procedures may be required under any given set of circumstances is based on a determination of the precise nature of the governmental function involved, and the "liberty" or "property" interest affected (Bishop v. Wood, ____ US ____, 48 L Ed 2d 684; Paul v. Davis 424 US 693; Board of Regents v. Roth, 408 US 564; Perry v. Sindermann, 408 US 593; Russell v. Hodges, 470 F 2d 212; Ryan v. Aurora City Board of Education, 540 F 2d 222; See also Matter of McNeill, 16 Ed. Dept. Rep. ____, Decision No. 9347, dated December 21, 1976). In the present case, petitioner was a probationary teacher subject to the requirements of Education Law section 2573, subdivision 1, paragraph a. That paragraph states, insofar as pertinent, that:

"In city school districts having a population of four hundred thousand or more, persons with licenses obtained as a result of examinations announced subsequent to the twenty-second day of May, nineteen hundred sixty-nine appointed upon conditions that all announced requirements for the position be fulfilled within a specified period of time, shall not acquire tenure unless and until such requirements have been completed within the time specified for the fulfillment of such requirements, notwithstanding the expiration of any probationary period."

After the Court of Appeals decision in Matter of Mannix, 21 NY 2d 455, section 2573, subdivision 1 was amended by Chapter 822 of the Laws of 1969 to prevent the acquisition of tenure by teachers in the New York City and Buffalo City School districts unless and until all announced requirements have been met. Petitioner has no statutory right to a hearing prior to the termination of her license for failure to meet eligibility requirements, nor has she shown that any collective bargaining agreement provision guarantees her such a right (See Bishop v. Wood, supra; Ryan v. Aurora City Board of Education, supra; Blair v. Board of Regents, 496 F 2d 322; Jeffries v. Turkey Run Consolidated School District, 492 F 2d 1; Buhr v. Buffalo Public School District No. 38, 509 F 2d 1196).

In addition, the cancellation of petitioner's license for failure to meet eligibility requirements does not have the stigmatizing impact referred to in Board of Regents v. Roth, supra, and Perry v. Sindermann, supra, as clarified in Paul v. Davis, supra.

In Russell v. Hodges supra, the Court of Appeals for the Second Circuit discussed the meaning and interpretation of the decisions of the United States Supreme Court in Board of Regents v. Roth, supra and Perry v. Sindermann, supra. The Court stated, at pages 216-217:

> "As we understand these opinions, an employee seeking to show, absent any claim of First Amendment violations, that his termination was a deprivation of 'liberty' must demonstrate that the government had made a charge 'that might seriously damage his standing and associations in his community' or had imposed 'a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities.' 408 U.S. at 573, 92 S. Ct. at 2707. The Court made clear that by the latter phrase it meant something more than the disadvantage inevitably entailed when a person 'simply is not rehired in one job but remains as free as before to seek another.' 408 U.S. at 575, 92 S. Ct. at 2708. 'Mere proof, for example, that his record of nonretention in one job, taken alone, might make him somewhat less attractive to some other employers would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of 'liberty.' 408 U.S. at 574 n. 13, 92 S. Ct. at 2708. 'Property' interests, the Court held, include not merely contractual or statutory rights to continued employment but rights under a 'de facto tenure program,' resulting from 'the existence of rules and understandings, promulgated and fostered by state officials, that my justify his legitimate claim of entitlement to continued employment.' 408 U.S. at 600, 602, 92 S. Ct. at 2700. But the Court explained that a mere 'unilateral expectation' of continued employment was not sufficient 'property' to trigger due process guarantees. 408 U.S. at 577, 603, 92 S. Ct. at 2701.

* * * *

> "...we believe the Court was thinking of something considerably graver than a charge of failure to perform a particular job, lying within the employee's power to correct; the cases cited as illustrations involved charges of chronic alcoholism or association with subversive organizations. Indeed, a general rule that informing an employee of job-related reasons for termination created a right to a hearing, in circumstances where there was no constitutional requirement for the State to do anything, would be self-defeating; the state would merely opt to give no reasons and the employee would lose the benefit of knowing what might profit him in the future."

The termination of petitioner's teaching license for failure to meet eligibility requirements is clearly not related in any way to petitioner's moral character or reputation (See Lombard v. Board of Education, City of New York, 502 F 2d 631; Velger v. Cawley, 525 F 2d 334; McNeil v. Butz, 480 F 2d 314). In the absence of any factors which stigmatize petitioner, she is not entitled to a hearing concerning her failure to meet eligibility requirements.

The thrust of petitioner's remaining argument is that she should be permitted to have her teaching license restored pursuant to section 255 b of the by-laws of the Board of Education of the City of New York. That section states as follows:

> 255b. Restoration of License
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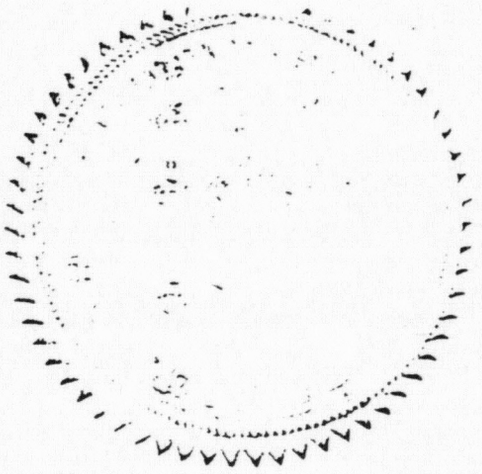
> "On or before October 1, 1978, the Chancellor may for good cause shown at his discretion restore a license terminated

> under the provisions of subdivision(f) of Section 241 of these Bylaws for failure to meet requirements in full within a specified time period of five or ten years where the teacher has rendered satisfactory service thereunder for at least one year and where the full requirements for such license were met at a date later than the date otherwise required in these Bylaws, provided, however, that the date so required was between September 1, 1974, and September 15, 1977, both dates inclusive. Upon restoration of a license under the provisions of this Section, a teacher whose service has not otherwise been interrupted may continue in service."

This section provides temporary authority to the Chancellor to restore a teaching license where a teacher fails to complete requirements in a timely fashion but does complete them after the final date for meeting requirements. It is clear from the language of this section, however, that a teacher may not appeal for restoration of a license until all the requirements for licensure have been completed. Since it is undisputed that petitioner has not met the requirements for licensure as of the date of this decision, she is clearly not an eligible applicant under this section.

For the foregoing reasons the appeal must be dismissed.

THE APPEAL IS DISMISSED.



IN WITNESS WHEREOF, I, Ewald B. Nyquist, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 23rd day of February, 1977.

Commissioner of Education